

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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ARA V. MARUTYAN, *et al.*,

Case No. 2:16-cv-01089-MMD-EJY

## Plaintiffs,

## ORDER

v.

## LAS VEGAS METROPOLITAN POLICE DEPARTMENT.

Defendant.

## I. SUMMARY

*Pro se* Plaintiffs filed a first amended complaint under 42 U.S.C. § 1983 against Defendant, the Las Vegas Metropolitan Police Department (“LVMPD”). (ECF No. 43 (“FAC”).)<sup>1</sup> This action arises from Defendant’s seizure of property in Plaintiffs’ possession pursuant to search warrants. Plaintiffs allege that Defendant violated the Fourteenth Amendment’s Due Process Clause as the post-deprivation Nevada state remedy of seeking the return of Plaintiffs’ property—filing a lawsuit in state court—is constitutionally inadequate. (ECF No. 31 at 4-6.)

Before the Court are the parties' competing summary judgment motions. (ECF Nos. 78, 82.)<sup>2</sup> As further discussed below, Nevada law provides an adequate remedy for the return of unlawfully seized property and Plaintiffs have failed to offer evidence that they were denied procedural due process. The Court therefore will grant Defendant's motion and deny Plaintiff's motion.

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<sup>1</sup>The FAC is the operative complaint and Plaintiffs' Fourteenth Amendment procedural due process claim is the sole remaining claim in this action. (ECF Nos. 66 at 3; 69.)

<sup>2</sup>The Court has additionally reviewed the parties' corresponding responses and replies. (ECF Nos. 80, 81, 83, 84.)

1       **II. BACKGROUND**

2           The following facts are taken from Plaintiffs' original complaint and the FAC.<sup>3</sup>  
 3 (ECF Nos. 1, 43.) Plaintiffs Ara, Arthur, and Diana Marutyan (collectively, "Plaintiffs")  
 4 reside at a single-family residence in Las Vegas, Nevada. (ECF No. 43 at 1.) On  
 5 February 6, 2014, Ara gave a LVMPD detective a laptop, charger, and business travel  
 6 bag. (*Id.* at 2.) The detective thereafter sought and received approval of a search  
 7 warrant. (*Id.*)

8           From February to March 2014, LVMPD police officers effectuated search warrants  
 9 of Plaintiffs' residence on four different occasions. (*Id.*) LVMPD seized more than 100  
 10 items from Plaintiffs' residence including the following: \$15,000.00 and \$74,662.00 in  
 11 United States currency, firearms, cell phones, and a brief case containing passports,  
 12 social security cards, and other legal papers.<sup>4</sup> (*Id.* at 2-3.) Pursuant to a search warrant,  
 13 LVMPD additionally searched Diana's dorm room in Galesburg, Illinois on April 3, 2014  
 14 and seized a cell phone. (*Id.* at 3.)

15           Plaintiffs made numerous calls to LVMPD from June to August 2014 in an effort to  
 16 have the seized property returned. (*Id.* at 5.) Arthur wrote letters to government officials  
 17 seeking help. (*Id.*) Plaintiffs made visits to the Clark County Commissioner's office to ask  
 18 for help with the return of Plaintiffs' documents. (*Id.*) In September 2014, LVMPD  
 19 returned Plaintiffs' passports and social security card but refused to return anything else.  
 20 (*Id.*) Plaintiffs also visited and wrote to the Clark County District Attorney's office. (*Id.* at  
 21 6-7.) The office responded that it was "not involved in the matter." (*Id.* at 7.) Plaintiffs  
 22 eventually filed on April 10, 2015 a lawsuit in the Eighth Judicial District Court ("State  
 23 Action").<sup>5</sup> (ECF No. 1 at 5.)

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 25           <sup>3</sup>The Ninth Circuit Court of Appeals has instructed that this action may proceed on  
 26 the Fourteenth Amendment procedural due process claim pled in the original complaint  
 27 and the operative FAC. (ECF No. 66 at 3.)

28           <sup>4</sup>Plaintiffs filed an affidavit of inventory, ownership, and value, that includes return  
 29 receipts and provides a more detail list of seized items. (ECF No. 75.)

30           <sup>5</sup>See *Marutyan v. Las Vegas Metro. Police Dep't*, Case No. A-15-716800 (Nev.  
 31 Dist. Ct. filed Apr. 10, 2015). Plaintiffs reference the State Action in their original

1 More than a year after filing the State Action, Plaintiffs initiated this federal action.  
 2 (ECF No. 1.) Plaintiffs were never charged with a crime, and LVMPD never commenced  
 3 any civil forfeiture proceedings for the seized property. (*Id.* at 3-4.) Plaintiffs allege in gist  
 4 that the only post-deprivation process to obtain the return of seized items requires filing a  
 5 state court lawsuit. (*Id.* at 5; see also ECF No. 31 at 4-5.) This process appears to be  
 6 inadequate due to attorneys delaying the case and “the [state court] judge’s preferential  
 7 treatment towards the defendants [sic].” (ECF No. 1 at 5.)

8 **III. LEGAL STANDARD**

9 “The purpose of summary judgment is to avoid unnecessary trials when there is  
 10 no dispute as to the facts before the court.” *Nw. Motorcycle Ass’n v. U.S. Dep’t of Agric.*,  
 11 18 F.3d 1468, 1471 (9th Cir. 1994) (citation omitted). Summary judgment is appropriate  
 12 when the pleadings, the discovery and disclosure materials on file, and any affidavits  
 13 “show there is no genuine issue as to any material fact and that the movant is entitled to  
 14 judgment as a matter of law.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). An  
 15 issue is “genuine” if there is a sufficient evidentiary basis on which a reasonable fact-  
 16 finder could find for the nonmoving party and a dispute is “material” if it could affect the  
 17 outcome of the suit under the governing law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S.  
 18 242, 248-49 (1986). Where reasonable minds could differ on the material facts at issue,  
 19 however, summary judgment is not appropriate. See *id.* at 250-51. “The amount of  
 20 evidence necessary to raise a genuine issue of material fact is enough ‘to require a jury  
 21 or judge to resolve the parties’ differing versions of the truth at trial.’” *Aydin Corp. v. Loral*  
 22 *Corp.*, 718 F.2d 897, 902 (9th Cir. 1983) (quoting *First Nat’l Bank v. Cities Service Co.*,  
 23 391 U.S. 253, 288-89 (1968)). In evaluating a summary judgment motion, a court views  
 24 all facts and draws all inferences in the light most favorable to the nonmoving party. See  
 25 *Kaiser Cement Corp. v. Fishbach & Moore, Inc.*, 793 F.2d 1100, 1103 (9th Cir. 1986)  
 26 (citation omitted).

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27 complaint, and Defendant attached a copy of Plaintiffs’ State Action complaint to  
 28 Defendant’s prior motion to dismiss. (See ECF Nos. 1 at 5; 6-1).

1           The moving party bears the burden of showing that there are no genuine issues  
 2 of material fact. See *Zoslaw v. MCA Distrib. Corp.*, 693 F.2d 870, 883 (9th Cir. 1982).  
 3 Once the moving party satisfies Rule 56's requirements, the burden shifts to the party  
 4 resisting the motion to "set forth specific facts showing that there is a genuine issue for  
 5 trial." *Anderson*, 477 U.S. at 256. The nonmoving party "may not rely on denials in the  
 6 pleadings but must produce specific evidence, through affidavits or admissible discovery  
 7 material, to show that the dispute exists," *Bhan v. NME Hosps., Inc.*, 929 F.2d 1404,  
 8 1409 (9th Cir. 1991), and "must do more than simply show that there is some  
 9 metaphysical doubt as to the material facts." *Orr v. Bank of Am.*, 285 F.3d 764, 783 (9th  
 10 Cir. 2002) (quoting *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586  
 11 (1986)). "The mere existence of a scintilla of evidence in support of the plaintiff's position  
 12 will be insufficient[.]" *Anderson*, 477 U.S. at 252.

13 **IV. DISCUSSION**

14           The parties filed cross motions for summary judgment. (ECF Nos. 78, 82.) But  
 15 because the Court finds that Defendant's argument—that the Nevada state-law post-  
 16 deprivation remedy is adequate—is dispositive, the Court will address only this  
 17 argument.<sup>6</sup>

18           Defendant argues that NRS § 179.085, the state law governing the return of  
 19 unlawfully seized property, is adequate as a post-deprivation remedy. (ECF No. 78 at 8-  
 20 10 (citing NRS § 179.085).) Citing to *Hudson v. Palmer*, 468 U.S. 517, 533 (1983) and  
 21 *Parratt v. Taylor*, 451 US. 527, 541-44 (1982), Defendant further argues that, so long as  
 22 the State of Nevada provides a post-deprivation remedy, then this is "all the process that  
 23 is due." (*Id.* at 8.) Plaintiffs' opposition fails to respond to Defendant's argument. (See  
 24 ECF No. 80.) As the party resisting Defendant's motion, it is Plaintiffs' burden to show  
 25 there is a genuine dispute regarding the post-deprivation remedy provided under NRS §

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<sup>6</sup>Defendant makes two additional arguments in their summary judgment motion  
 28 (see ECF No. 78 at 5-8), which the Court declines to address as further discussion of  
 these arguments is unnecessary and unwarranted.

1 179.085. Plaintiffs, however, have failed to do so. In any event, the Court agrees with  
 2 Defendant.

3 The Due Process Clause of the Fourteenth Amendment prohibits states from  
 4 depriving “any person of life, liberty, or property without due process of law.” U.S. Const.  
 5 amend. XIV, §1. The Supreme Court has further held, “property [] cannot be deprived  
 6 except pursuant to constitutionally adequate procedures.” *Cleveland Bd. of Educ. v.*  
 7 *Loudermill*, 470 U.S. 532, 541 (1985). Nevada Revised Statutes § 179.085 is the state  
 8 law governing the return of unlawfully seized property. See NRS § 179.085(1) (1967) (“A  
 9 person aggrieved by an unlawful search and seizure may move the court having  
 10 jurisdiction where the property was seized for the return of the property.”), *amended by*  
 11 Laws 2015, c. 113, § 1, eff. Oct. 1, 2015.<sup>7</sup> See also *Sams v. Bader*, Case No. 3:17-cv-  
 12 00255-RCJ-VPC, 2018 WL 1932880, \*3 (D. Nev. Apr. 24, 2018) (“Nevada law provides  
 13 an adequate remedy, in NRS [§] 179.085, for the return of unlawfully seized or retained  
 14 property both in pending criminal proceedings and via separate civil actions.”). Plaintiffs  
 15 resorted to filing the State Action on April 10, 2015 to seek the return of the seized  
 16 property.

17 Here, Plaintiffs claim that filing the State Action was an inadequate remedy in  
 18 violation of procedural due process under the Fourteenth Amendment. Nothing in the  
 19 record supports this claim nor the allegations that the state court judge offered  
 20 Defendant preferential treatment and Plaintiffs were prejudiced by the delays in the State  
 21 Action. Moreover, Plaintiffs did not respond to Defendant’s argument that NRS §  
 22 179.085 is an adequate post-deprivation remedy. Accordingly, the Court finds Plaintiffs  
 23 have failed to meet their burden to survive summary judgment. In light of Defendant’s  
 24 argument that Nevada law provides an adequate remedy as well as Plaintiffs’ lack of  
 25 evidence or arguments to the contrary to create a dispute at this stage, the Court will  
 26 grant summary judgment in favor of Defendant.

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 7The Court quotes the prior language of NRS § 179.085(1) as the State Action  
 was filed on April 10, 2015 and the statute was later amended on October 1, 2015.

## **V. CONCLUSION**

The Court notes that the parties made several arguments and cited to several cases not discussed above. The Court has reviewed these arguments and cases and determines that they do not warrant discussion as they do not affect the outcome of the summary judgment motions before the Court.

It is therefore ordered that Defendant's motion for summary judgment (EFC No. 78) is granted.

It is further ordered that Plaintiffs' motion for summary judgment (ECF No. 82) is denied.

The Clerk of Court is directed to enter judgment accordingly and close this case.

DATED THIS 5<sup>th</sup> Day of January 2021.

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MIRANDA M. DU  
CHIEF UNITED STATES DISTRICT JUDGE